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De Succeſſionibus apud Anglos: H C

THE
Law of Hereditary Deſcents.

SHEWING

The Riſe, Progreſs and ſucceſſive Alterations thereof: Alſo the Law of Deſcents as now in uſe.

By Sir MATTHEW HALE.

edited by Sir Bartholomew Shower

O 160

LONDON,

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TO

Sir *S. E.* Knight.

THIS

TREATISE

IS

Moſt Humbly Dedicated

BY HIS

Moſt Obliged and moſt

Obedient Servant,

B. S.

TO

Sir S. E. Knight.

THIS

TREATISE

Most Humbly Dedicated

BY

Most Obliged and most

Obedient Servant.

R. C.

TO THE READER.

THis little Treatise of Hereditary Descents being recommended to my perusal, I willingly embraced the opportunity of shewing my esteem of the great Learning of the Author, and my Love for the Publick in sending it abroad. And I was the

rather induced to the Publication of it, because upon review of these Papers, I found the Contents of them to be generally useful and very instructive.

This Treatise I think may be truly said to be Primæ Impressionis, the first, nay, and the only Book of this nature extant, and our Author has by his Labour and Study, shortned the tedious way of drudging in large Volumes, by giving

us

us this Book, in which he has laid together and fully digested, whatever is necessary and useful to the knowledge of the Law in this particular. And I don't doubt but you will find the Author has bravely acquitted himself in the management of his Work, and laid you under the Obligation of owning the Depth of his Learning, and the Strength of his Judgment.

To the Reader.

I am unwilling to detain you any longer than only to tell you, that tho' in this Treatise there is nothing but what most Practicers do know already; yet the Method I beleive will render it useful in some sort to those of the greatest Learning.

B. S.

A Scheme of Pedigrees:

And also, The *Degrees* of *Parentage* and *Consanguinity*.

Adgnati ex parte Patris.
Cousins on the part of the Father, the more worthy in Descents, tho' farther remote.

Adgnati, quasi à Patre cognati.

Linea transversalis seu collateralis
The Side Line.

Abpatruus magnus.
The great Uncles Grand-Father on the Fathers side.

Abamita magna.
The great Uncles Grand-Mother on the Fathers side.

Propatruus magnus.
The great Uncles Father on the Fathers side.

Proamita magna.
The great Uncles Mother on the Fathers side.

Patruus magnus.
The great Uncle on the Fathers side.

Amita magna.
The great Aunt on the Fathers side.

Avus ab Ævo, quia Patre antiquior.

Patruus.
The Uncle or Fathers Brother.

Patruus, quasi loco Patris.

Amita.
The Aunt or Fathers Sister.

Amita, quasi à me tertia.

Frater.
A Brother.

Frater, quasi fere alter.

Semi Germanus Frater,
Brother of one Father, and several Mothers.

Semi Germani fratres, quasi ex eodem Patre & separalibus Matribus nati.

Soror.
Sister.

Soror, quasi sorte orta diversa.

Patrueles à Patruo.
Sons or Daughters, Cousin Germans on the Fathers side.

Amitini ab Amita.
Sons or Daughters, Cousin Germans on the Fathers side.

Filius, Filia. dicti ἀπὸ τῆς φιλίας. i.e. ab amore parentum.

Horum. Of these.
Filius. The Son.
Filia. The Daughter right Cousin Germans.

Nepos, quasi Nos post.

Eorum. Of these. *Nepos collateralis.* The collateral Nephew. *Neptis collateralis.* The collateral Niece.

Eorundem. Of these. *Pronepos collateralis.* The collateral Nephews Son. *Proneptis collateralis.* The collateral Nephews Daughter.

Et sic in infinitum.

RECTA LINEA:

THE

RIGHT LINE.

Tritavus. The great Grand-Fathers great Grand-Father.	6	*Tritavia.* The great Grand-Fathers great Grand-Mother.
Attavus. The great Grand-Fathers Grand-Father.	5	*Attavia.* The great Grand-Fathers Grand-Mother.
Abavus. The great Grand-Fathers Father.	4	*Abavia.* The great Grand-Fathers Mother.
Proavus. The great Grand-Father.	3	*Proavia.* The great Grand-Mother.
Avus. The Grand-Father.	2	*Avia.* The Grand-Mother.
Pater. Father.	1	*Mater.* Mother.

Linea recta ascendens.

The Right Line ascending.

Propositus.

Lined recta descendens.

The Right Line descending.

Filius. Son.	1	*Filia.* Daughter.
Nepos linealis. The lineal Nephew.	2	*Neptis linealis.* The lineal Neece.
Pronepos linealis. The lineal Nephew or Neeces Son.	3	*Proneptis linealis.* The lineal Nephew or Neeces Daughter.
Abnepos linealis. The Grand-Son of the lineal Nephew or Neece.	4	*Abneptis linealis.* The Grand-Daughter of the lineal Nephew or Neece.
Atnepos linealis. The great Grand-Son of the lineal Nephew or Neece.	5	*Atneptis linealis.* The great Grand-Daughter of the lineal Nephew or Neece.
Trinepos linealis. The great Great Grand-Son of the lineal Nephew or Neece.	6	*Trineptis linealis.* The great Great Grand-Daughter of the lineal Nephew or Neece.

Et sic in infinitum. *Et sic in infinitum.*

Cognati ex parte Matris.
Cousins on the part of the Mother, the less worthy in Descents, tho' nearer of Kin.

Cognati, quasi simul nati ex parte Matris.

Linea transversalis seu collateralis
The Side Line.

Abavunculus.
The great Uncles Grand-Father on the Mothers side.

Abmatertera magna.
The great Uncles Grand-Mother on the Mothers side.

Proavunculus magnus.
The great Uncles Father on the Mothers side.

Promatertera magna.
The great Uncles Mother on the Mothers side.

Avunculus magnus.
The great Uncle on the Mothers side.

Matertera magna.
The great Aunt on the Mothers side.

Avunculus.
The Uncle or Mothers Brother.

Avunculus, quasi Avus minor.

Matertera.
The Aunt or Mothers Sister.

Matertera, quasi Mater altera.

Frater,
A Brother.

Uterinus Frater,
Brother of one Mother and several Fathers.

Uterini, quasi nati ex eodem utero.

Soror,
Sister.

Fratres ex separalibus Patribus.

Avunculini ab Avunculo.
Sons or Daughters, Cousin Germans on the Mothers side.

Materterini à matertera.
Sons or Daughters, Cousin Germans on the Mothers side.

Horum. Of these.
Filius. The Son.
Filia. The Daughter, right Cousin Germans.

Eorum. Of these. *Nepos collateralis.* The collateral Nephew. *Neptis collateralis.* The collateral Neece.

Eorundem. Of these. *Pronepos collateralis.* The collateral Nephews Son. *Proneptis collateralis.* The collateral Nephews Daughter.

Et sic in infinitum.

DE Successionibus APUD ANGLOS

MY design in the following Discourse is to Treat of the Hereditary Transmission of Lands from Ancestor to Heir, and the certainty thereof, and what growth this Doctrine has had in

Succeſſion of time, till it arrived to the State and Prefection which now it hath.

And touching Hereditary Tranſmiſſion, or Succeſſion commonly with us called Deſcents, I ſhall hold this Order in my Diſcourſe, (*viz.*)

1*ſt*, To give ſome account touching the Ancient Laws, both *Jewiſh*, *Greek* and *Roman*, concerning this matter.

2*ly*, To obſerve ſome things, wherein it may appear, how the particular Cuſtoms, or Municipal Laws

Laws of other Countries, varied from those other Laws.

3*ly*, To give some account of the Rules and Laws of Descents, or Hereditary Transmissions as they stood, and at this day stand in *England*, with the successive alterations, that process of time, and the wisdom of our Ancestors, and Customs grown up, tacitely, gradually and successively, have made therein.

And first touching the Succession or Descent of Inheritance, as also of Goods, among the *Jews*, Mr. *Selden*

in his Book *De Succeſſionibus apud Hebræos*, hath given us an excellent account, as well out of the holy Text, as out of the *Comments* of *Rabbins*, or *Jewiſh Lawyers*, which I briefly compriſe, in the 5, 6, 7, 12 and 13 Chapters of that Book, the ſum whereof, for ſo much as concerns my purpoſe, is this.

1. That in the deſcending Line, the Deſcent or Succeſſion, was unto all the Sons, only the eldeſt had a double Portion, (*viz.*) If there were three Sons, the eldeſt had two fourths, and

and each other Son one fourth part.

2. The Nephew, or Son of the Son, dying in the Fathers Life, and ſo *in infinitum*, ſucceeded in the partition of his Father, as if his Father had been in Poſſeſſion of it.

3. The Daughter did not ſucceed in the Inheritance of the Father, as long as there was Sons, or Deſcendants from them. But if one Son had died in the life of his Father, having Daughters and

without Sons, his Daughters ſucceeded in his part, as if he had been Poſſeſſed.

4. In caſe there were no Sons but Daughters, the Daughters equally ſucceeded their Father without any *prelation* of the eldeſt, to two parts, or a double Portion.

5. But if the Son had an Inheritance, and died without Iſſue, having a Father, and Brothers, the Inheritance of the Son deſcended, not to his Brothers unleſs

in case of the next Brother taking to Wife the deceased's Wife, to raise Children for the Brother deceased, but in such case the Father inherited his Son entirely.

6. But if the Father were dead, it came to the Brothers, as it were as Heirs to the Father, in the same manner, as if the Inheritance had been actually possessed by him; and therefore, the Fathers other Sons, and their Descendants *in infinitum* succeeded, but

yet equally, and without any double Portion to the eldest, because (though in truth the Brothers succeeded as it were in Right of Representation from the Father; yet) the Father dying before his Son, the Descent was *de facto*, immediately from the Brother to the Brother, where the Law gave not a double Portion; and in case the Father had no Sons, or Descendants from them, then it descended to all the Sisters.

7. If

7. If the Son died without Iſſue, and his Father or any Deſcendants from him were extant, it went not to the Grandfather, or his other Deſcendants. But if the Father were dead without Iſſue, it deſcended to the Grandfather, and if he were dead, then to his Sons and their Deſcendants, and for want of them, then to his Daughters or their Deſcendants, as if the Grandfather himſelf had been actually poſſeſſed, and had died. And ſo, *mutatis mutandis*,

dis, to the *Proavus*, *Abavus*, *Atavus*, &c. But the Inheritance of the Son, never retorted to the Mother, or to any of her Anceſtors, but ſhe and they were totally excluded.

8. The double Portion that was therefore *jus primogenituræ* never took place, but in that perſon that was the *Primogenitus* of him, from whom the Inheritance immediately deſcended, or in him that repreſented him. If *A.* had two Sons, *B.* and *C.* and *B.* the eldeſt, had two

two Sons, *D.* and *E.* and died, *B.* ſhould have had a double Portion, (*viz.*) two thirds and *C.* only one third. And if *B.* had died in the life time of *A.* and then *A.* died, *D.* and *E.* ſhould have had the two thirds, or double Portion, which had belonged to *B.* if he had ſurvived his Father, and this double Portion ſhould have been divided between *D.* and *E.* thus, *viz.* *D.* ſhould have had two thirds of the two thirds that came to them, and *E.* the other third part thereof. A-

Among the Græcians, the Laws of Descents, in some sort, resembled those of the *Jews*. In some things they differed *Vide Petyti Leges Atticæ, Tit. 6. De Testamentis & Hæreditario Jure*, where the Text of their Law runs thus, *Omnes Legitimi Filii Hæreditatem Paternam ex æquo inter se Hæriscunto. Siquis intestatus moritur, relictis filiabus, qui eas in Uxores ducent Hæredes sunto. Si nullæ superstint, hi ab intestato hæreditatem cernunto. Et primo quidem Fratres defuncti Germani & Legitimi Fratrum Filii hæreditatem simul adeunto. Si nulli Fratres aut Fratrum Filii su-*

ſuperſint, iis geniti eadem Lege hæreditatem cernunto: Maſculi autem iis geniti, etiamſi remotiori cognationis ſint gradu, præferuntor. Si nulli ſuperſint Paterni proximi ad ſobrinorum uſque Filios, materni defuncti propinqui ſimili Lege Hæreditatem adeunto. Si è neutra cognatione ſuperſint intra definitum gradum, proprior cognatus paternus adito Notho Nothæve. Superſtite legitima Filia, Nothus hæreditatem Patris ne adito. This Law is very obſcure, but the Sence ſeems to be briefly this, That all the Sons equally inherit the Father; but if he have no Sons, then the

the Husbands of the Daughters; if he have no Children, then his Brothers, and his Brothers Children; and if none, then his next Kindred of the part of his Father, preferring the Males before the Females; and if none of the Fathers Line, *ad sobrinorum usque Filios*, then to descend to the Mothers Line. *Vide Petyt's Gloss. in hanc Legem.*

Among the *Romans* it appears, that the Laws of Succession did successively vary, for the Laws of the Twelve Tables excluded the Females from Inheriting, and

and had many other ſtraitneſſes which were ſucceſſively remedied by *Claudius*, and after him by *Hadrianus, in Senatus-conſulto Tertulliano*, and after him by *Juſtinian*, in the third Book of his Inſtitutes, *De Hæreditatibus quæ ab inteſtato deferuntur*, and the two enſuing Titles. And again, all this further explained, and ſetled by the Novel Conſtitutions of the ſame *Juſtinian*, ſtiled *Authenticæ Novellæ, de Hæreditatibus ab Inteſtato venientibus, & agnatorum jure ſublato*; Therefore omitting the large Inquiry into the ſucceſſive changes

changes of the *Roman* Law in this particular, I ſhall only ſet down how, according to the Conſtitution, the *Roman* Law ſtands ſetled therein.

The Deſcents, or Succeſſions from any Perſon, are of three Kinds, *viz.*

1. Deſcending.

2. Aſcending.

3. Collateral, *viz. In Agnátos à Parte Patris, in Cognatos à Parte Matris.*

1*ſt*, In the deſcending Line, theſe Rules are directed.

1. The deſcending Line, whether Male or Female, whether immediately or remote, takes place, and prevents the Deſcent or Succeſſion Aſcending, or Collateral, *in infinitum.*

2. The remote Deſcendants of the Deſcending Line, ſucceed *in Stirpem*, That is, to ſucceed into that right which his Parents ſhould have had.

3. That this Deſcent or Succeſſion is equal in all the Deſcendants, without

preference of the Male before the Female. So that, if the Common Anceſtor had three Sons and three Daughters, each had a ſixth part, and if one died in the life of the Father, having three Sons and three Daughters, that ſixth part, that had belonged to the Perſon dead, ſhould have been equally divided, between his or her ſix Children, and ſo *in infinitum*, in the Deſcending Line.

2*ly*, In the Aſcending Line, there are theſe Rules.

1. If the Son die without Iſſue, or any Deſcending from him, leaving a Father and Mother, both of them ſhall equally ſucceed to the Son, and prevent all others of the Collateral Line, Except Brothers and Siſters, as ſhall be ſaid, or if only a Father, or only a Mother, he or ſhe alone ſhall ſucceed.

2*ly*, But if the deceaſed had a Father, Mother, Brother and Siſter, *ex utriuſque parentibus conjuncti*; they ſhall all equally ſucceed the Son, by equal parts, without preference of the Male.

3. In the Collateral Line.

1. If the Deſcendant die without Father, Mother, Son or Daughter, or any Deſcending from them in the right Deſcending Line, the Brothers and Siſters *ex utriuſque Parentibus conjuncti*, and the immediate Children of them, ſhall ſucceed equally, without preference of either Sex, and the Children from them, ſhall ſucceed *in Stirpes*. As if there be a Brother and Siſter, and the Siſter dies in the Life of the Deſcendant, leaving one or more Children. All ſuch Children ſhall ſucceed in the moiety, that

that ſhould have come to their deceaſed Mother, had ſhe ſurvived.

2. But if there be no Brothers or Siſters, *ex utriuſque Parentibus conjuncti*; nor any of their immediate Children, then the Brothers and Siſters of the Half-blood, and their immediate Children, ſucceed *in Stirpes*, to the deceaſed, without any Prerogative to the Male.

3. But if there be no Brothers or Siſters of the whole, or half-blood, nor any of their immediate Children, (for their Grand-Children

are not provided for by Law) then the next Kindred are called to the Inheritance.

4. But if the next be in equal degree, whether on the part of the Father, as *Agnati*; or on the part of the Mother, as *Cognati*, then they are equally called to the Inheritance, and equally succeed *in Capita*, and not *in Stirpes*.

Thus far of these settled Laws of the *Jews*, *Greeks* and *Romans*. But the particular, or Municipal Laws, and Customs of almost every Country, derogate from these Laws, and direct Successi-

Successions in a much different way.

For instance, By the Customs of *Lombardy* (according to which, the Rule of the Feuds, both in their Descents, and other things, are much directed) their Descents are in a much different manner. *Lib.* 1. *Feud. Tit.* 1. If a Feud be granted to one Brother, who dies without Issue, it Descends not to his Brother, unless especially so provided in the first Infeudation.—If the Donee dies, having Issue Sons and Daughters, it descends only to the Sons. Whereas, by the *Roman* Law, it descends

both to the Sons and Daughters. The Brother alſo ſucceeds not, to the Brother, unleſs ſpecially ſo provided, *ibid. Tit.* 50. The Aſcendants ſucceed not, but only the Deſcendants, neither doth a Daughter ſucceed, *niſi ex parte, vel niſi ſit Feudum fœmininum.*

If we come nearer home, to the *Normandy* Laws, there are two kind of Lands partable, or not partable; the Lands that are partable, are all *Vavaſories*, *Burgages*, and ſuch like, which are much of the nature of our *Sotcage Lands*. Theſe deſcend to all the Sons, or to all the Brothers. Lands not partable

able are Fiefs and Dignities; theſe deſcend to the eldeſt Son, and not to all the Sons, and if there be no Sons, then to all the Daughters partable. For want of Sons and Nephews, it deſcends to the Daughters, if no Sons or Daughters; or Deſcendants from them, it deſcends to the Brothers, and for want of Brothers, to the Siſters, obſerving, as before, the difference between Lands partable and not partable, and accordingly the Deſcent runs to the poſterity of the Brothers, unto the ſeventh Degree. And if there be no Brothers or Siſters, or any Deſcendants from

from them, within the ſeventh Degree, it deſcends to the Father; and if the Father be dead, to the Uncles and Aunts, *ut ſupra*, to Brothers and Siſters; and if there be none, then to the Grand-father. So that, according to their Law, the Father is poſtpon'd to the Brother and Siſter, and their Iſſues, but is preferred before the Uncle; tho' by the *Jewiſh* Law, the Father be preferred before the Brother; by the *Roman* Law ſucceeds together with the Brother; and by the *Engliſh* Law, takes not immediately by deſcent, but the Fathers Brother.

2. If

2. If Lands descend from the part of the Father, they never Resort by Descent, to the Line of the Mother; but in cases of Purchases by the Son, who dies without Issue; for want of Heirs of the part of the Father, it descends to the Heir of the part of the Mother, according to the Law of *England.*

3. The Son of the eldest Son, dying in the life of the Father, is preferred, before the younger Son surviving the Father, as the Law stands here now, but it hath some interruption.

4. In

4. In an equality of degree, in Collateral Deſcents, the Male Line is preferred, before the Female.

5. Although by the Civil Law, *Fratres utriuſque Parentis conjuncti, præferuntur fratribus conſanguineis tantum, vel uterinis*; yet it ſhould ſeem, by the Cuſtom of *Normandy*, That *Fratres conſanguinei, viz. ex eodem patre, ſed diverſa matre*, ſhall take by Deſcent, together with the Brothers, *ex utroque conjuncti*, upon the death of any of ſuch Brothers. But this ſeems to be a miſtake, for it ſeems the Half-blood, hinders

hinders the Deſcent between Brothers or Siſters.

6. Leproſie was among them, an Impediment of Succeſſion, but then it ſeems, it muſt be ſolemnly adjudged to be a Leproſie, by the Sentence of the Church. Upon this and much more that might be obſerved, upon the Cuſtoms of ſeveral Countries, the Rules of Succeſſion, or Hereditary Tranſmiſſion, have been various in ſeveral Countries, according to various Laws, Cuſtoms and Uſuages.

And

And now, after this brief Survey of the Laws and Cuſtoms of other Countries, I come to the Laws and Uſuages of *England* in relation to Deſcents, and the growth that thoſe Cuſtoms have ſucceſſively had, and whereunto they are now arrived.

1. Touching the Hereditary Succeſſion, it ſeems, that according to the Ancient *Britiſh* Laws; their eldeſt Sons inherited their Earldoms, and Baronies, for they had great Dignities, and Juriſdictions annexed to them, and were in nature of Principalities.

But

But their ordinary Freeholds descended to all the Sons; and this Custom they carried with them into *Wales*, whither they were driven. This appears by the Statute *Walliæ* 12 *Ed.* 1. *Aliter usitatum est in Wallia quam in Anglia quoad Successionem Hæreditatis, eò quòd Hæreditas partibilis est inter Hæredes Masculos, & à tempore cujus non extiterit Memoria partibilis extitit. Dominus Rex non vult quòd Consuetudo illa abrogetur, sed quòd Hæreditates remaneant partibiles inter Consimiles Hæredes, sicut esse consueverunt, & fiat Partitio illius sicut fieri consuevit; hoc excepto, quòd Bastardi*

non

non habeant de cæteroHæreditates, & etiam quòd non habeant Purpartes cum Legitimis, nec ſine legitimis. Upon which three things are obſervable.

Firſt, That at this time, the Hereditary Succeſſion of the eldeſt Son, was then known to be the Common, and uſual Law in *England*.

2*ly*, That the Succeſſion of all the Sons, was the Ancient Cuſtomary Law among the *Britiſh* in *Wales*, which is here continued.

3*ly*, That before this time, Baſtards were admitted to Inhe-

Inherit in *Wales*, as well as the Legitimate, which Uſuage is here abrogated. And although we have but few Evidences, touching the *Britiſh* Laws, before their Expulſion into *Wales*, yet this uſage ſeems ſufficiently to Evidence, That this was the antient *Britiſh* Law.

2*ly*, As to the times of the *Saxons* and *Danes*, their Laws collected by *Brampton*, and by Mr. *Lambard*, ſpeak not much concerning the Courſe of Deſcents. Yet it ſeems, that commonly the Deſcents of their ordinary Lands, (at leaſt except Barronies and Royal Inheri-

tances) deſcended alſo to all the Sons. Among the Laws of *Canutus*, there is this Law, *Lambard* fol. 122, *Tit. de Inteſtato Mortuis*, *Sive quis incuria, ſive morte repentina fuerit inteſtato Mortuus, Dominus tamen nullam rerum ſuarum partem (præter eam quæ jure debetur Hæredi nomine) ſibi aſſumito. Verùm eas Judicio ſuo Uxori, Liberis, & cognatione proximis, juſtè (pro ſuo cuique jure) diſtribuito.* Upon which we may obſerve theſe things.

1*ſt*, That the Wife had a ſhare, as well of Lands for her Dower, as Goods.

2*ly*,

2*ly*, That in reference to Hereditary Succeſſion, there then ſeemed to be little difference, between Lands and Feuds, for here is no diſtinction.

3*ly*, That there was a kind of ſettled right of Succeſſion, with reference to proximity and remoteneſs, *pro ſuo cuique jure*.

4*ly*, That in reference to Children, they ſeemed all to ſucceed alike, without any diſtinction between the Males and Females.

5*ly*, That yet the Anceſtor might diſpoſe by his Will, as well of Lands as Goods, which uſage ſeems to have obtained, unto the time of *H.* 2. as appears hereafter by *Glanvil.*

3. It ſeems, That until the Conqueſt, the Deſcent of Lands was, at leaſt to all the Sons alike, and, for ought appears alſo, to all the Daughters, and that there was no difference in the Hereditary Tranſmiſſion of Lands and Goods at leaſt, in reference to the Children. This appears, by thoſe Laws of King *Edward*, con-

confirmed by the Conquerer and recited in *Lambard fol.* 167. and alſo by Mr. *Selden* upon *Eadmerus, Lege* 36. *Tit. De Inteſtatorum bonis* 184. *Siquis inteſtatus obierit, Liberi ejus Hæreditatem equaliter dividant.*

But this equal diviſion of Inheritances among the Children, was found to be very inconvenient.

For Firſt, It weakned the Strength of the Kingdom, for by frequent parcelling, and ſubdividing of Inheritances in proceſs of time, Inheritances were ſo crumbled, that there were few perſons of able Eſtates, left

to undergo publick Charges or Offices.

2*ly*, It did by degrees, bring the Inhabitants to a low kind of Country Living, and Families were broken, and the younger Sons, which had they not had theſe little parcells of Land to apply themſelves to, would have betaken themſelves either to Trades, or Military, or Civil, or Eccleſiaſtical Imployments, neglected thoſe opportunities, and applied themſelves to their ſmall dividends of Land, whereby they neglected opportunities of greater advantage, to enrich themſelves

ſelves and the Kingdom.

And therefore, *William* the Conqueror (having by his acceſſion to the Crown, gotten the Poſſeſſions and Demeans of the Crown; and alſo, very many and great poſſeſſions of them that oppoſed him, or adhered to *Harold*); diſpoſeth of theſe Lands, or great part of them to his Countrymen, and others that adhered to him, and retained certain *Honorary Tenures*, either by Baronage, or in Knights Service, or by Grand Serjeantry, for the Defence of the Kingdom. And poſſibly alſo, as the deſire of many Own-

ers, changed their Tenures into Knights Service. Which Introduction of new Tenures, was not nevertheleſs without conſent of Parliament, as appears by the additional Laws before mentioned, That King *William* by the advice of Parliament made mention of by Mr. *Selden*, upon *Eadmerus* pag. 191, among which this was one, (*viz.*) *Statuimus etiam & firmiter præcipimus ut omnes Comites, Barones, Milites & Servientes, & univerſi Liberi homines totius Regni noſtri, habeant, & teneant ſe ſemper in armis, & in equis, ut decet & oportet. Et quod ſint ſemper prompti, & bene parati*

rati ad ſervicium ſuum integrum nobis explendendum, & peragendum, cum ſemper opus affuerit, ſecundum quod nobis de Feodis debent, & Tenementis ſuis de jure facere. Et ſicut illis ſtatuimus, per commune conſilium totius Regni noſtri & illis dedimus & conceſſimus in Feodo jure Hæreditario. Whereby it appears, that there were two kinds of Military Proviſions, one that was ſet upon all Freeholders, by common conſent of Parliament, which was uſually called *Aſſiza Armorum*, and another that was *Conventional*, and by Tenure upon the Infeudation of the Tenant, which was called Knights Service, and

and ſometimes Royal, and ſometimes Foreign Service, and ſometimes *Servitium Loricæ.*

And hence it came to paſs, that (not only according to the Cuſtom of *Normandy*, but alſo according to the Cuſtom of other Countries.) Theſe *Honorary Fees*, or *Infeudations* became deſcendable to the eldeſt, and not to all the Males. And hence it is, That in *Kent*, where the Cuſtom of Deſcent to all the Males, generally prevails; They pretend, a conceſſion of all their Cuſtoms by the Conqueror, to obtain their Submiſſion to his Govern-

Government, according to the Romantick Story of their moving Wood. Yet, even in *Kent* it ſelf, theſe ancient *Tenures* or *Fees*, that are anciently held by Knights Service, are deſcendable to the eldeſt Son, as Mr. *Lambard* hath obſerved to my hand, in pag. 553. out of the *9th* of *H.*3. *Fitz. Tit. Preſcription* 63, 26 *H.* 8. 5. and the Statute of 31 *H.* 8. *cap.* 3. But yet, even in *Kent* it ſelf, If Gavelkind Land, Eſcheat, or come to the Crown by Attainder, or Diſſolution of Monaſteries, and be granted to be held in Knights Service, or *per Baroniam*, the

the Cuſtomary Deſcent is not changed, neither can be, but by Act of Parliament, for it is a Cuſtom fixed to the Land.

But thoſe *Honorary* Fees, made in ancient times, ſo ſhortly after the Conqueſt, did ſilently, and ſuddainly aſſume the Rule of Deſcent to the eldeſt, and accordingly held it; and ſo, (although poſſibly there were no Act of Parliament of thoſe elder times, that altered the ancient courſe of Deſcents, from all the Sons to the eldeſt, or at leaſt none that we know of; yet,) the uſe of the Neighbour Country, might intro-

introduce the ſame Uſage here, as to theſe *Honorary* Poſſeſſions.

And becauſe theſe *Honorary* Infeudations were many, and ſcattered almoſt through all the Kingdom in a little time, they introduced a a parity in the Succeſſion of Lands of other Tenures, as *Soccage* or *Vavaſories*. So that without queſtion, by little and little almoſt generally in all Counties of *England* (except *Kent*, who were moſt Tenacious of their own Cuſtoms, in which they gloried, and ſome particular Fees, and Places where a contrary Uſage prevailed) the ge-

nerality of Deſcents or Succeſſions by little and little, as well of *Soccage* Lands, as of Knights Service, went to the eldeſt Son, according to the Declaration of King *Edward* the firſt, in the Statute of *Wales* abovementioned, as will more fully appear by what follows.

In the time of *H.* 1. *Lambard* fol. 203. we find in his 70*th* Law, that it ſhould ſeem, that the whole Land did not yet deſcend to the eldeſt Son, but began a little to look that way. *Primum patris Feudum primogenitus filius habeat.* As to Collateral Deſcents, the Law determined thus,

thus, *Lambard ut ſupra. Siquis ſine liberis deceſſerit, Pater aut mater ejus in Hæreditatem ſuccedat; vel frater vel ſoror ſi pater & mater deſint; ſi nec hos habeat, ſoror Patris vel Matris, & deinceps in quintum geniculum; qui eum propinquiores in parentela, fiunt, Hæreditario jure ſuccedant; & dum virilis Sexus extiterit, & Hæreditas abinde ſit, fœminina non Hæreditetur.* By this it ſeems.

1. The eldeſt Son (though he had *Jus Primogenituræ*, the principal Fee of his Father, yet) he carried not all the Land.

2. That

2. That for want of Children the Father or Mother, inherited, before the Brother or Sister.

3. That for want of Children, Father, Mother, Brothers and Sisters, the Lands decended to the Uncles and Aunts, to the Fifth Degree.

4. That in Succeſſion Collateral *Proximity* of Kindred was preferred.

5. That the Male was preferred before the Female; That is, the Father's Line was preferred before the

the Mothers, unleſs the Land deſcended from the Mother, and then the Mothers Line was to be preferred.

How this Law was obſerved in the Intervals, between *Henry* the firſt, and *Henry* the ſecond, we can give no account. But the next period that we come to, is *Henry* the 2*d*. *Glanvil* in his ſeventh Book, gives us ſome account how the Law ſtood in his time, wherein, notwithſtanding it will appear, there was ſome incertainty in the buſineſs of Deſcents, or Hereditary Succeſſions, though it was

much better polited than formerly.

The Rules then of Succeſſion were either in reference to Goods or Lands. As to Goods, one third part went to the Wife, another third part to the Children, the other third part to the Teſtator's diſpoſal; But if he had no Wife, a Moiety went to the Children, the other Moiety to his diſpoſal, *Glan. lib. 7. c. 5.* But as to the Succeſſion of Lands, the Rules were theſe:

1*ſt*, If the Lands were Knights Service, they generally went to the eldeſt Son; and in caſe of no Son, to

to all the Daughters; and in caſe of no Children, to the eldeſt Brother.

2*ly*, If the Lands were *Socage*, it deſcended to all the Sons, *Si fuerit Socagium & id antiquitus diviſum*, only the chief Houſe was to be allotted to the Pourparty of the eldeſt, and a Compenſation made to the reſt in lieu thereof. *Si vero non fuerit antiquitus Diviſum, tunc Primogenitus, ſecundum quorundam conſuetudinem totam Hæreditatem obtinebit, ſecundum autem quorundam conſuetudinem poſtnatus filius Hæres eſt, Glanvil lib.7.cap.3.* So that although

Cuſtom directed variouſly the Deſcent, either to the eldeſt, youngeſt, or all the Sons; Yet, it ſeems at this time *Jus commune*, or Common right ſpoke for the eldeſt Son to be Heir, no Cuſtom intervening.

3*ly*, As the Son, or Daughter, ſo their Children *in infinitum*, are preferred in the Deſcent before the Collateral Line, or Uncles.

4*ly*, But if a Man have two Sons, and the eldeſt dies in the life time of the Father, having a Son or Daughter, and then the Father

Father dies; it was then controverted, whether the Son, or the Nephew ſhould ſucceed the Father, though the better Opinion ſeemed to be for the Nephew, *Ibid. cap.* 3.

5*ly*, A Baſtard could not Inherit, *ibid. cap.* 13. And although by the Common and Civil Law, If *A.* hath a Son born of *B.* before Marriage, and after *A.* Marries *B.* this Son be Legitimate and Hereditable: Yet according to the Law of *England* then uſed, as well as after, he was not Hereditable, *Glan. lib.* 7. *cap.* 15.

6ly, In caſe the Purchaſer die without Iſſue, the Lands deſcended to the Brother, and for want of Brothers to the Siſters, and for want of them to the Children of the Brothers or Siſters, and for want of them to the Uncles, and ſo onwards according to the Rules of Deſcents at this day; and the Father and Mother were not immediately to Inherit the Son, but the Brothers or Uncles, and their Children, *Glan. lib. 7. cap. 4.*

And

And it ſeems, that in all things elſe the Rule of Deſcent, in reference to the Collateral Line, held much the ſame as now: As namely, If Land deſcended of the part of the Father, it ſhould not reſort to the part of the Mother, *& è converſo*; But in caſe of Purchaſe, for want of Heirs of the part of the Father, it reſorted to the Line of the Mother, and the nearer and worthier Blood was preferred, ſo that if there were any of the part of the Father, though never ſo far diſtant, it hindered the deſcent to the Line of the

Mother, though much nearer.

There were in thoſe times as it ſeems two Impediments of Deſcent, or Hereditary Succeſſion which now do not at all obtain.

1. Leproſie, if ſo adjudged by the Sentence of the Church; this indeed I find not in *Glanvil*, but I find it pleaded, and allowed in the time of King *John*, and the Land adjudged to the Siſter, *P.* 4. *Johannis.*

2. There

2. There was another curioſity, and it is wonderful to ſee how much, and how long it prevailed, for we find it in uſe in *Glanvil*, that wrote in King *Hen.* 2*d*'s time; in *Bracton*, that wrote in *Hen.* 3*d*'s time; in *Fleta*, that wrote in the time of *Ed.* 1. and in the broken year *Ed.* 1. Fitz. Avowry 235. *Nemo poteſt eſſe Tenens & Dominus & Homagium repellit perquiſitum.* And therefore, if the eldeſt Brother had enfeoffed the ſecond reſerving Homage, and had received Homage, and then the ſecond had died without Iſſue,

ſue, it ſhould have deſcend-ed to the youngeſt, and not to the eldeſt Brother; *quia Homagium repellit per-quiſitum*, ſee for this that I may mention it once for all, *Glan. lib. 7. cap. 1. Bra. lib. 2. cap. 30. Fleta lib. 6. cap. 1.* And ſo it has been for ought I can find ever ſince 3 *Ed.* 1. and in-deed it is antiquated rather than altered, and the Fan-cy upon which it is ground-ed hath appeared trivial; for if the eldeſt Brother enfeoff the ſecond reſer-ving Homage, the ſe-cond dying without Iſſue, it will Deſcend to the el-deſt as Heir, and the Seig-nioury

nioury is extinct. Indeed it might have been ſome Reaſon to have examined, whether he might not have waved the Deſcent, in caſe his Services had been more beneficial than the Land; but there could be little Reaſon for this to exclude him from Succeſſion. I ſhall mention no more of this nor the former Impediment, (*viz.*) Leproſie, for they are both vaniſhed, and antiquated long ſince, and neither the one nor the other is at this day any impediment of Deſcent.

And

And now paſſing over the time of King *John*, and *Richard* the firſt, becauſe I find nothing of moment in that time relating to the Title in queſtion, unleſs the uſurpation of King *John* upon his eldeſt Brothers Son, which he would fain have juſtified, by introducing a Law of preferring the younger Son before the Nephew, deſcended from the eldeſt Brother: But this pretention could no ways juſtifie his Uſurpation, as hath been ſhewn in the time of *Henry* the Second.

We have the Tractate of *Bracton lib.* 2. *cap.* 30, 31. and *lib.* 5. The truth is, there is ſo little variance as to the Points of Deſcents, between the Law as it was taken when *Bracton* wrote, and the Law as it was afterwards taken in *Edward* the firſt's time, when *Britton* and *Fleta* wrote, that there is very little difference between them as may eaſily appear, eſpecially by comparing of *Bract. ubi ſupra* and *Fleta Lib.* 5. *Chapter* the *9th*, *Liber* the *6th*, *Chapters* the *1ſt* and *2d*, that the latter ſeems to be in effect an Abſtract of the former, therefore I ſhall ſet down what

what in ſubſtance both ſay, and thereby it will appear, that the Rules of Deſcents in the times of *Henry* the 3*d*, and *Edward* the 1*ſt*, were very much one.

1*ſt*, The Law ſeems ſettled now unqueſtionably, that the eldeſt Son was in Common right Heir, not only in caſes of Knights Service Land, but alſo of *Soccage Lands*, unleſs there was a Special Cuſtom to the contrary, as in *Kent* and ſome other places, and ſo that Point of the Common Law is fully ſettled.

2*ly*,

2*ly*, That all the Deſcendants *in infinitum*, from any Perſon that had been Heir (if he had been living) were Inheritable: As the Deſcendants of the Son, of the Brother, of the Uncle, *&c.*

3*ly*, That the eldeſt Son dying in the life time of the Father, his Son or Iſſue was to have the preference as Heir to the Father before the younger Brother, and ſo the doubt in *Glanvil*'s time was ſettled, *Glan. lib. 7. cap. 3. Cum quis autem moriatur habens filium poſtnatum & ex Primogenito filio*

filio præmorturo Nepotem, magna quidem Juris dubitatio ſolet eſſe, uter illorum præferendus ſit alij in illa Succeſſione; ſcilicet utrum Filius an nepos.

4*ly*, The Father, or Grandfather could not by Law Inherit immediately his Son.

5*ly*, Leproſie, though it were an exception to the Plaintiff, becauſe he ought not to converſe in the Courts of Law, yet we no where find, that it was an Impediment of Deſcent.

So

So that upon the whole matter for any thing I can obſerve in them, the Rules of Deſcent then ſtood ſettled in all Points as they are at this day, except thoſe few matters which yet in proceſs of time ſoon ſettled as they now ſtand, (*viz.*)

1. That Impediments of the hinderance of Deſcent, from him that did Homage, to him that received it, ſeems to have yet been in uſe, at leaſt till the 3 *Ed.* 1. and in *Fleta*'s time, for he puts the caſe and admits it.

2. Whereas they both agree, that Half-blood to him who is the Purchaſer, is an Impediment of the Deſcent; yet in caſe of a Deſcent from a Common Anceſtor, Half-blood is no Impediment. For inſtance; *A.* hath Iſſue *B.* a Son, and *C.* a Daughter by one venter, and *D.* a Son by another venter, if *B.* Purchaſe in Fee, and die without Iſſue, it ſhall deſcend to the Siſter, and not to the Brother of the Half-blood: But if the Land had deſcended from *A.* to *B.* and he had entred and died without Iſſue;

ſue; it was a doubt in the time of *Bracton* and *Britton*, whether it ſhould go to the younger Son, or the Daughter, but though it were then a doubt, yet the Law hath ſince that time been ſettled, that in both caſes it deſcends to the Daughter, *Seſeina facit Stirpem & primum gradum, & poſſeſſio fratris de feodo ſimplici facit ſororem eſſe hæredem.*

Upon the whole matter it ſeems, that abating theſe ſmall inconſiderable variances, the States and Rules of Deſcents as they ſtood, in the time of *Henry* the third, or at leaſt of *Ed-*

ward the firſt, were reduced to their full Complement and Perfection, and vary nothing conſiderably, from what they are at this day, and have continued ever ſince that time.

I ſhall therefore ſet down the State, and Rules of Deſcents in Fee-ſimple as they ſtand at this day, without medling with particular Limitations and Entails, which vary the courſe of Deſcents in ſome caſes from the Common Rules of Deſcents in Hereditary Succeſſion, and herein we ſhall ſee what the Law hath been, and con-

continued touching the ſame ever ſince *Bracton*, who wrote in *Henry* the third's time, now above Four hundred years ſince, and by that we ſhall ſee what alterations ſucceſſion of time hath made therein.

And now to give a ſhort Scheme of the Rules of Deſcents, or Hereditary Succeſſions of the Lands of Subjects, as the Law ſtands at this day, and hath ſtood ſettled here for above Four hundred years.

All poſſible Hereditary Succeſſion may be diſtinguiſhed into theſe three kinds:

1*ſt*, Deſcending, as from Father to Son, or Daughter, to Nephew, or Niece.

2*ly*, Collateral, as from Brother to Brother, or Siſter and Brothers Children.

3*ly*, Aſcending, either direct, as from Son to Father, or Grand-father which is not admitted by the Laws of *England*; or in the Tranſverſal Line, as to the Uncle or Aunt, Great Uncle, or Great Aunt, and becauſe this Line again divides it ſelf into the Line of the Father and Mother, this Tranſverſal aſcending Succeſſion is either in the Line of the Father, Grand-father, *&c.* or in the Line of

of the Mother, Grand-Mother, *&c.* the former are called *Agnati*, the latter *Cognati*; I ſhall therefore ſet down a Scheme of Pedigrees, to explain the nature of Deſcents, or Hereditary Succeſſions.

Pedigree.

THis Pedigree with its Application will give a plain account of all Hereditary Succeſſion, under their ſeveral Caſes and Limitations, as will appear by theſe enſuing Rules, take our Mark or Epocha from the Father.

1 *Rule*, In Deſcents the Law preferrs the Worthieſt Blood; and upon this Account.

1*ſt*, In all Deſcents immediately the Male is preferred before the Female, whether in Succeſſions, Deſcending, Aſcending or Collateral; therefore the Son Inherits and Excludes the Daughter, the Brother is preferred before the Siſter, the Uncle before the Aunt.

2*ly*, In all Deſcents immediate, the Deſcendants from Males are preferred before the

the Deſcendants from Females; and hence it is, that the Daughter of the eldeſt Son, is preferred in Deſcent from the Father, before the Son of the youngeſt Son, the Daughter of the eldeſt Brother or Uncle is preferred before the Son of the younger; the Uncle, nay the Great Uncle, or Great Grand-fathers Brother ſhall Inherit before the Uncle of the Mothers ſide.

2 *Rule*, That in Deſcents, the next of Blood is preferred before the Remote, though equally worthy; and upon this account.

1*ſt*,

1*ſt*, The Siſter of the whole Blood, is preferred in Deſcents before the Brother of the half Blood, becauſe more ſtrictly joyned to the Brother of the whole Blood, (*viz.* by the Father and Mother) than the Brother, though otherwiſe more worthy of the half Blood.

2*ly*, Becauſe the Son, or Daughter is nearer than the Brother, the Brother or Siſter than the Uncle, the Son or Daughter ſhall Inherit before the Brother or Siſter, and they before the Uncle.

3*ly*,

3*ly*, That yet the Father or Grand-father, or Mother or Grand-mother in a direct aſcending Line, ſhall never ſucceed immediately, the Son or Grandchild: But the Fathers Brother ſhall be preferred before the Father, and the Grand-fathers Brother, ſhall be preferred before the Grand-father, and yet upon a ſtrict account, the Father is nearer of Blood to the Son than the Uncle, yea than the Brother; for the Brother is therefore of the Blood of the Brother, becauſe both derive from the ſame Parent, the

the Common Fountain of both their Blood. And upon this account, the Father is at this day preferred in the Adminiſtration of his Sons Goods, before his Sons Brother of the whole Blood, and a Remainder limited *Proximo de Sanguine* ſhall veſt in the Uncle.

3 *Rule*, That all the Deſcendants from ſuch a Perſon, as by the Law of *England*, might have been Heir to another, hold the ſame right by Repreſentation, as that Common Root, from whom they are Deſcended. And therefore, 1*ſt*,

1*ſt*, They are in Law in the ſame Right of Proximity and Worthineſs of Blood, as their Root that might have been Heir, was in caſe he had been living: And hence it is, That the Son or Grand-child, whether Son or Daughter of the eldeſt Son, ſucceeds before the youngeſt Son. The Son or Grand-child of the eldeſt Brother, ſucceeds before the youngeſt *B*rother, and ſo in all Degrees of Succeſſion by the right of Repreſentation, the right of Proximity, is transferred from the Root to the *B*ranches, and gives them

them the ſame preference as next, or Worthieſt of Blood.

2*ly*, This Right transferred by Repreſentation, is infinite and unlimited in the Degrees of thoſe that deſcend from the Repreſenter; the *Filius*, the *Nepos*, *Pronepos*, *Abnepos*, and ſo *in infinitum*, enjoy the ſame Privilege of Repreſentation, as thoſe from whom they derive their Pedigree, as well in Deſcents Lineal as Tranſverſal; and therefore the *Abnepos*, or *Abneptis* of the eldeſt Brother, whether it be Son or Daughter, ſhall be preferred

ferred before the youngeſt *B*rother, becauſe, though the Female be leſs worthy than the Male; yet ſhe ſtands in right of Repreſentation of the eldeſt *B*rother, who was more worthy than the youngeſt.

3*ly*, And upon this account it is, That if a Man hath two Daughters, and the eldeſt die in the Life of the Father, leaving ſix Daughters, and then the Father dies, the youngeſt Daughter ſhall have an equal ſhare to all the reſt, becauſe they ſtand in Repreſentation of their Mother,

Mother, who ſhould have had but a Moiety.

4*th Rule*, That by the Laws of *England*, without a Special Cuſtom to the contrary, the eldeſt Son or Brother, or Uncle excludes the younger, and the Males in an equal Degree do not all Inherit: But the Daughters whether by the ſame, or divers venters do Inherit together, the Father and all the Siſters do Inherit, the Brother by the ſame venter.

5*th Rule,* That the laſt actual Seizin in any Anceſtor, makes him as it were the Root of the Deſcent equal to many Intents, as if he had been a Purchaſer; and therefore, he that cannot according to the Rules of Deſcent derive his Succeſſion to him, who was laſt actually ſeized, though he might have derived his Succeſſion to ſome precedent-Anceſtor ſhall not Inherit. And hence it is, That where Lands deſcend to the eldeſt Son from the Father, and the Son enters and dies without Iſſue, his Siſter of the whole Blood

ſhall Inherit as Heir to the Brother, and not the younger Son of the half Blood, becauſe he cannot be Heir to the Brother of the half Blood. But if the eldeſt Son had ſurvived the Father, and died before Entry, the youngeſt Son ſhould Inherit as Heir to the Father and not the Siſter, becauſe he is Heir to Father, that was laſt actually ſeized. And hence it is, that though the Uncle is preferred before the Father in Deſcent to the Son; yet if the Uncle enter after the Death of the Son, and die without Iſſue, the Father ſhall Inherit

herit the Uncle, *Quia Seiſina facit Stirpem.*

6th Rule, That whoſoever derives a Title to any Land, muſt be of the Blood of him that firſt purchaſed it. And this is the Reaſon why, if the Son purchaſe Lands and dies without Iſſue, it ſhall deſcend to the Heirs of the part of his Father, and if he hath none, then to the Heirs of the part of his Mother, becauſe tho' the Son hath both the Blood of the Father and of the Mother in him, yet he is of the Blood of the Mother, and the *Conſanguinei* of the Mother are

Conſanguinei cognati of the Son. And of the other ſide, if the Father had purchaſed the Land, and it had deſcended to the Son, and the Son had died without Iſſue, without any Heir of the part of his Father, it ſhould never have deſcended in the Line of his Mother, but eſcheated, for though the *Conſanguinei* of the Mother were *Conſanguinei* to the Son, yet they were not of *Conſanguinity* to the Father, who was the purchaſer. But if there had been none of the Blood of the Grandfather, yet it might have reſorted to the Line of the Grandmother, becauſe

cauſe her *Conſanguinei* were as well of the Blood of the Father as the Mothers *Conſanguinity* is of the Blood of the Son. And conſequently alſo, if the Grandfather had purchaſed Lands, and it had deſcended from him to the Father, and from him to the Son, if the Son had entered and died without Iſſue, his Fathers Brothers or Siſters, or their Deſcendants, or for want of them, his Grandfathers Brothers or Siſters, or their Deſcendants, or for want of them, his great Grandfathers Brothers or Siſters, or their Deſcendants, or for want of them his great

Grandmothers, Brothers or Siſters, or their Deſcendants might have inherited; for the *Conſanguinity* of the great Grandmother, was of the *Conſanguinity* of the Grandfather, but none of the Line of the Mother or Grandmother, (*viz.*) the Grandfathers Wife ſhould have inherited, for that they were not of the Blood of the firſt Purchaſer. And the ſame Rule *è converſo* holds in Purchaſes in the Line of the Mother or Grandmother, they ſhall always keep in the ſame Line, wherein the firſt Purchaſer ſettled them. But it is not neceſſary, that he

that

that inherits be always Heir to the Purchaſer, but it ſufficeth if he be of his Blood, and Heir to him who was laſt ſeiſed. The Father purchaſeth Lands, and it Deſcends to his Son who dies without Iſſue, it ſhall never deſcend to the Heir of the part of the Sons Mother; But if the Sons Grandmother hath a Brother, and the Sons great Grandmother hath a Brother, and there is no other Kindred, it ſhall deſcend to the Grandmothers Brother; and yet, if the Father had died without Iſſue, his Grandmothers Brother ſhould have been prefer-

red before his Mothers Brother, becauſe the former was Heir of the part of his Father, though by a Female, and the latter was Heir of the part of his Mother. But where the Son is once ſeiſed, and dies without Iſſue, his Grandmothers Brother is to him Heir of the part of his Father, and being nearer than his great Grandmothers Brother, is preferred in Deſcent. But this is always intended, ſo long as the Line of the Deſcent is not broken, for if the Son alien thoſe Lands, and then repurchaſe them again in Fee; Now the Rules of De-

Deſcent hold as if he had been the original Purchaſer, and that it had never been in the Line of the Father or Mother.

7th Rule, In Succeſſion, as well in the Line Deſcending, Tranſverſal or Aſcending, the Line that is firſt derived from a Male Root, hath always the preference. *A.* hath Iſſue two Sons, *B.* and *C. B.* hath Iſſue a Son and a Daughter, *D.* and *E. D.* the Son hath Iſſue a Daughter, *F.* and *E.* the Daughter hath Iſſue a Son, *G. C.* nor any of his Deſcendants ſhall not inherit ſo long as there are

are any Deſcendants from *D.* and *E.* and *E.* the Daughter, nor none of her Deſcendants ſhall inherit, ſo long as there are Deſcendants from *D.* the Son, whether they be Male or Female.

In Deſcents, Collateral as Brothers and Siſters, the ſame Inſtance applied evidenceth the concluſion. But in Succeſſions in the Line Aſcending, there muſt be a fuller explanation, becauſe it is darker and more obſcure; I ſhall therefore ſet forth the whole Method of Tranſverſal, Aſcending, Deſcents in theſe enſuing Rules.

1*ſt Rule*, If the Son purchaſeth Lands in Fee-ſimple, and dies without Iſſue, thoſe of the Male Line Aſcending *uſque in infinitum* ſhall be preferred in the Deſcent according to their *Proximity* of Degree to the Son. Therefore the Fathers Brothers or Siſters, or their Deſcendants ſhall be preferred before the Brothers of the Grandfather and their Deſcendants. And again, if the Father had no Brothers nor Siſters, the Grandfathers Brothers and their Deſcendants, and for want of Brothers, the Grandfathers Siſters, and

their

their Deſcendants ſhould be preferred before the Brothers of the great Grandfather: For although by the Law of *England* the Father nor Grandfather cannot immediately inherit the Son, yet the direction of the Deſcent to the Collateral Line aſcending, is as much as if the Father or Grandfather had been by Law inheritable, and therefore as in caſe the Father had been inheritable, he ſhould have inherited the Son before the Grandfather, and the Grandfather before the great Grandfather, and conſequently if the Father had

had inherited and died without Iſſue, his eldeſt Brother and his Deſcendants ſhould have inherited before the younger Brother, and his Deſcendants, and if he had no Brothers but Siſters, his Siſters and their Deſcendants ſhould inherit before his Uncles, or the Grandfathers Brothers, and their Deſcendants, ſo though the Law of *England* exclude the Father from inheriting, it ſubſtitutes, and directs the Deſcent as it ſhould have been, if the Father had inherited, *viz.* Lets in thoſe firſt that are in the next Degree to him.

2*d Rule* is this, That the Line of the part of the Mother ſhall never inherit, as long as there are any though never ſo remote of the Line of the part of the Father; and therefore, though the Mother hath a Brother, yet if the *Atavus* or *Atavia* of the Father hath a Brother or Siſter, He and She ſhall be preferred and exclude the Mothers Brother though he is much nearer.

3*d Rule*, But yet farther. The Male Line of the part of the Father deſcending, ſhall *in æternum* exclude the Female

Female Line of the part of the Father aſcending, and therefore in the caſe propoſed, the Son purchaſing Lands and dying without Iſſue, the Siſter of the Father, Grandfather or great Grandfather, and ſo *in infinitum* ſhall be preferred before the Fathers Mothers Brother, though the Fathers Mothers Brother be a Male, and the Fathers Grandfathers Siſter be a Female, and more remote, becauſe it is in the Male Line, which is more worthy than the Female Line, though even the Female Line be of the Blood of the Father.

4*th*

4*th Rule*, But as in the Male Line aſcending, the more near is preferred in the Deſcent; before the remote; ſo in the Female Line deſcending, ſo it be of the Blood of the Father, the more near is preferred before the remote. The Son therefore purchaſeth Lands and dies without Iſſue, the Father, Grandfather, and great Grandfather, and ſo upward, all the Male Line are dead without Brother or Siſter, or any deſcending from them, but the Fathers Mother hath a Siſter or Brother, and alſo the Father's

thers Grandmother hath a Brother, and likewiſe the Fathers great Grand-mother hath a Brother; it is true, all theſe are of the Blood of the Father, and the very remoteſt of theſe ſhall exclude the Sons Mothers Brother; and it is likewiſe true, that the great Grandmothers Blood hath paſſed through more Males of the Fathers Blood, than the Blood of the Grand mother, or Mother of the Father, but in this caſe the Fathers Mothers Siſter ſhall be preferred before the Fathers Grand-mothers Brother, or great Grand-

mothers Brother, becauſe they are all in the Female Line, *viz*. *Cognati*, and the Fathers Mothers Siſter is the neareſt, and therefore ſhall have the preference, as well as in the Male Line aſcending the Fathers Brother or Siſter, ſhall be preferred before the Grand-Fathers Brother.

5*th Rule*, And yet in the laſt caſe, where the Son purchaſeth Lands and dies without Iſſue, and without Heir of the part of his Grand-father, the Land ſhould deſcend to his Grand-mothers Brother or Siſter, as

as Heir of the part of the Father; yet, if the Father had purchaſed this Land and died, and it deſcended to his Son who died without Iſſue, the Lands ſhould not have deſcended to his Fathers Mothers Brother or Siſter, for the Reaſon given in the eighth Rule, but for want of Brothers or Siſters of the Grandfather, great Grand-father, and ſo upward in the Male aſcending Line, it ſhould deſcend to the Fathers Grandmothers Brother or Siſter, which is Heir of the part of the Father, who ſhould be preferred before the

Fathers Mothers Brother, which was in truth the Heir of the part of the Mother of the purchaſer, though the next Heir of the part of the Father of him that laſt died ſeized. And therefore, as if the Father who was the purchaſer had died without Iſſue, the Heirs of the part of his Father, whether of the Male or Female Line, ſhould have been preferred before the Heir of the part of the Mother; ſo the Son that ſtands now in the place of his Father, and inherits to him primarily in his Fathers Line dying without Iſſue, the ſame Devolution

lution and Hereditary Succeſſion, ſhould have been as if his Father had immediately died without Iſſue, which ſhould have been to his Grandmothers Brother as Heir of the part of the Father, though by the Female Line, and not to his Mothers Brother, which was only Heir of the part of his Mother, and not to take till his Fathers Fine, as well Female as Male was ſpent.

6th Rule, If the Son purchaſe Lands and dies without Iſſue, and it deſcends to any Heir of the part of

the Father, and then the Line of the Father (after Entry and Poſſeſſion) fail, it ſhall never reſort to the Line of the Mother, tho' in the firſt Inſtance, or firſt Deſcent from the Son, it might have deſcended to the Heir of the part of the Mother: For now by this Deſcent and Seiſin, it is lodged in the Fathers Line, to whom the Heir of the part of the Mother can never derive a Title as Heir, but it ſhall rather Eſcheat. But if the Heir of the part of the Father had not entered, but then that Line had failed, it might

might have deſcended to the Heir of the part of the Mother, as Heir to the Son, to whom immediately for want of Heirs of the part of the Father it might have deſcended.

7th Rule, And upon the ſame Reaſon, if it had once deſcended to the Heir of the part of the Father of the Grand-fathers Line, and that Heir had entered, it ſhould never deſcend to the Heir of the part of the Father of the Grand-mothers Line, becauſe the Line of the Grand-mother was not of Blood or *Conſanguinity* to the Line of the Grandfathers ſide.

8th Rule, If for default of Heirs of the purchaſer of the part of the Father, the Lands Deſcend to the Line of the Mother, the Heirs of the Mother on the part of her Fathers Side, ſhall be preferred in Succeſſion before her Heirs of the part of her Mothers ſide, becauſe they are the more worthy. A great part of theſe differences are eaſily to be collected out of the Reſolutions in the caſe of *Clare verſus Brooke, alias Cobham.* And thus the Law ſtands in point of Deſcents, or Hereditary Succeſſion in *England* at this Day, and for above Four hundred years paſt.

FINIS.

Ex. G. A. A.